No. 89-412

(2)

FILED
NOV 7 1989
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

October Term, 1989

RANDY HEARN, ET AL.,
Petitioners,

vs.

CITY OF OVERLAND PARK, KANSAS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE KANSAS SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

MICHAEL R. SANTOS
(Counsel of Record)
Assistant City Attorney
City of Overland Park, Kansas
8500 Santa Fe Drive
Overland Park, Kansas 66212
(913) 381-5252

-and-

ROBERT J. WATSON
City Attorney
City of Overland Park, Kansas
8500 Santa Fe Drive
Overland Park, Kansas 66212
(913) 381-5252
Attorneys for Respondent

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

21pp

QUESTIONS PRESENTED

Subsequent to lengthy public hearings which included introduction of evidence indicating that pit bull dogs were responsible for 23 out of 32 deaths by domesticated dogs during a four-year period, the City of Overland Park, Kansas passed an ordinance regulating the keeping of pit bull dogs within the City.

The questions presented are:

1. Whether the regulation of domesticated dogs by reference to the animals' breed is sufficiently specific to withstand a constitutional challenge based on vagueness.

2. Whether a municipality's regulation of pit bull dogs is rationally related to the protection of the public health, safety and welfare and therefore a valid exercise of the police power.

LIST OF PARTIES

1. Petitioners are pit bull dog owners who reside in the City of Overland Park, Kansas.
2. Respondent is the City of Overland Park, Kansas.

TABLE OF CONTENTS

Questions Presented i

Parties Below ii

Table of Contents iii

Table of Authorities iv

Opinions Below 1

Statement of the Case 2

Reason for Denying the Writ 4

1. There Is No Conflict Among The Reported Decisions Concerning The Constitutional Validity Of Regulating Pit Bull Dogs 4

2. The Kansas Supreme Court Correctly Decided The Constitutional Issues Raised In This Case 6

   a. The City's Ordinance Regulating Pit Bull Dogs Is Not Unconstitutionally Vague 6

   b. The Regulation of Pit Bull Dogs Was Rationally Related To The Protection Of The Public's Health, Safety and Welfare and Therefore Was A Valid Exercise Of The Police Power 10

3. The Issues Raised In This Case Are Best Decided By Local Governments And Are Not Of Sufficient Scope And Importance In Our Society To Warrant United States Supreme Court Review 12

Conclusion 14

TABLE OF AUTHORITIES

Cases

Alabama Public Service Commission, et al. v. Southern Railway Co., 341 U.S. 341, 95 L. Ed. 1002, 71 S. Ct. 762 (1951) 13

American Dog Owners Association, Inc. v. City of Lynn, 404 Mass. 73, 533 N.E.2d 642 (1989) 5

American Dog Owners Association v. City of Yakima, 113 Wash.2d 213, 777 P.2d 1046 (1989) 5

Burford, et al. v. Sun Oil Co., et al., 319 U.S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424 (1943) 13

Coates v. City of Cincinnati, 402 U.S. 611, 29 L. Ed. 2d 214, 91 S. Ct. 1686 (1971) 8

Florida v. Peters, et al., 534 So. 2d 760 (Fla. Ct. App. 1988) 5, 9

Garcia, et al. v. Village of Tijeras, 767 P.2d 355 (N.M. App. 1988) 4

Goldblatt v. Town of Hempstead, 369 U.S. 590, 8 L. Ed. 2d 130, 82 S. Ct. 987 (1962) 10

Hearn, et al. v. City of Overland Park, 244 Kan. 638, 722 P.2d 758 (1989) 1, 9, 10, 11

Hoffman Estates, et al. v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 71 L. Ed. 2d 362, 102 S. Ct. 1186 (1982) 7, 8

Holt, et al. v. City of Maumelle, 647 F.Supp. 1529 (E.D. Ark. 1986) 12, 13

Jacobellis v. Ohio, 378 U.S. 184, 12 L. Ed. 2d 793, 84 S. Ct. 1676 (1964) 8

Johnston v. Atlanta Humane Society, et al., 173 Ga. App. 416, 326 S.E.2d 585 (1985) 12

Kolender, et al. v. Lawson, 461 U.S. 352, 75 L. Ed. 2d 903, 103 S. Ct. 1855 (1983) 6

Miller v. California, 413 U.S. 15, 37 L. Ed. 2d 419, 93 S. Ct. 2607 (1973) 6, 7

Nash, et al. v. United States, 229 U.S. 373, 57 L. Ed. 1232, 33 S. Ct. 780 (1913) 7

Nichia v. New York, 254 U.S. 228, 65 L. Ed. 235, 41 S. Ct. 103 (1920) 10

Ohio v. Robinson, 44 Ohio App. 3d 128, 541 N.E.2d 1092 (1989) 5

Parker, et al. v. Levy, 417 U.S. 733, 41 L. Ed. 2d 439, 94 S. Ct. 2547 (1974) 7

Robinson v. United States, 324 U.S. 282, 89 L. Ed. 944, 65 S. Ct. 666 (1945) 7

Sentell v. New Orleans, 166 U.S. 698, 41 L. Ed. 1169, 17 S. Ct. 693 (1897) 12

Starkey v. Chester Township, 628 F.Supp. 196 (E.D. Pa. 1986) 4

State v. Peters, 534 So.2d 760 (Fla. Dist. App. 1988) .. 9

Steffel v. Thompson, 415 U.S. 452, 39 L. Ed. 2d 505, 94 S. Ct. 1209 (1974) 8

United States v. Harriss, et al. 347 U.S. 612, 98 L. Ed. 989, 74 S. Ct. 808 (1954) 6, 7

United States v. National Dairy Corp., et al., 372 U.S. 29, 9 L. Ed. 2d 561, 83 S. Ct. 594 (1963) 7

United States v. Petrillo, 332 U.S. 1, 91 L. Ed. 1877, 67 S. Ct. 1538 (1947) 6-7

Vanater v. Village of South Point, 717 F.Supp. 1236 (S.D. Ohio W.D. 1989) 5

No. 89-412

In the Supreme Court of the United States

October Term, 1989

RANDY HEARN, ET AL.,
Petitioners,

vs.

CITY OF OVERLAND PARK, KANSAS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE KANSAS SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the Kansas Supreme Court, which appears in the Petition for Writ of Certiorari at Appendix I, is reported at 244 Kan. 638, 772 P.2d 758 (1989). The opinion of the Johnson County Kansas District Court, rendered at prior stages of the case at bar is not reported and is not appended hereto.

STATEMENT OF THE CASE

Sixty-seven-year old Grace Parson walked out of her home on October 23, 1983, to pick up the morning newspaper. She had just taken a few steps from the security of her house when she was viciously attacked and killed. She died from shock and loss of blood. Dr. Eckert, the Director of the Helpern International Center of Forensic Science at Wichita State University stated, "In 30 years of doing this work it's the worst case I've ever had. Her scalp was torn completely away from her head. There was a large chunk of muscle torn from her arm. . . The most horrible part was, she was alive when she was brought to the hospital in that condition." Grace Parson was killed by two pit bull dogs. (R. Vol. VI, Exhibit D, P. 10; R. Vol. XII, P. 164, 165). During the four years following Grace Parson's death, 28 other persons were killed by dogs in this country. In twenty of those cases, the attackers were pit bull dogs. (R. Vol. VI, Exhibit R; R. Vol. X, Exhibit R-1).

The City of Overland Park, Kansas in response to public outcry over such savage attacks by pit bull dogs both in the City and in surrounding communities, held public hearings to consider regulating or banning pit bull dogs in the City. (R. Vol. IV, Exhibit 34). Many citizens urged the Governing Body to adopt a total ban of pit bull dogs as was done in the neighboring communities of Shawnee, Kansas and Liberty, Missouri. The Governing Body listened to evidence on both sides, including a videotape of Dr. Brisben, the plaintiffs' expert at trial. The Governing Body ultimately determined from the evidence that pit bull dogs were inherently vicious and dangerous due to their history of having been bred to fight. The Governing Body further determined that the pit bull

dog's tremendous strength and biting power, combined with its unpredictability, caused severe and often fatal injuries to its victims. Because of the seriousness of their attack, the City could not risk "one bite" to determine whether any particular pit bull dog was dangerous. In addition, the Governing Body considered evidence of the frequency and nature of attacks by pit bull dogs within the City, neighboring communities, and the nation. The City's Governing Body further determined that the three breeds of dogs listed in the ordinance were historically bred for fighting. (R. Vol. III, Exhibit 17). The Governing Body amended the City's Dangerous Animal Ordinance to regulate, rather than ban the keeping of pit bull dogs within the City. The regulatory standards adopted by the Governing Body were the least restrictive possible that would still protect the public. More specifically, the ordinance required the following:

1. That all pit bull dogs be confined indoors or in a secure kennel.
2. That "Beware of Dog" signs be posted on premises where pit bull dogs are kept.
3. That a liability insurance be maintained by owners of pit bull dogs.
4. That pit bull dogs wear muzzles when walked on a leash.

The Governing Body noted that the regulation of these animals would result in the dogs' image improving because individuals who wanted such dogs would have to properly care for them. Ordinance DAC-1442 setting forth the regulations governing the keeping of pit bull dogs was signed by the Mayor and became effective October 5, 1987. (See Petition for Certiorari at Appendix II). Prior to enforcing the ordinance, the City amended the definition sec-

tion of the ordinance to insure the clear meaning and applicability of the new law. (See Petition for Certiorari at Appendix II). The Animal Control Division of the Overland Park Police Department also developed and implemented a standard operating procedure to guarantee the accurate identification of pit bull dogs within the City. (See Petition for Certiorari at Appendix III).

REASONS FOR DENYING THE WRIT

1. THERE IS NO CONFLICT AMONG THE REPORTED DECISIONS CONCERNING THE CONSTITUTIONAL VALIDITY OF REGULATING PIT BULL DOGS.

The reported cases that have addressed the issue of governmental regulation of pit bull dogs have upheld such regulations with one qualified exception. More specifically these decisions have uniformly held that the regulation of dogs by reference to their breed is well within the constitutional due process standards for specificity. In addition, the Courts have consistently held that pit bull dogs represent an immediate and significant threat to the health, safety and welfare of the public and therefore that the regulation of pit bull dogs is a valid exercise of the government's police power.

The reported cases and their holdings on the validity of pit bull dog regulations are as follows:

a. *Starkey v. Chester Township,* 628 F.Supp. 196 (E.D. Pa. 1986). The Federal District Court for the Eastern District of Pennsylvania upheld the constitutionality of an ordinance restricting the keeping of pit bull dogs.

b. *Garcia, et al. v. Village of Tijeras,* 767 P.2d 355 (N.M. App. 1988). The New Mexico Court of Ap-

peals upheld the constitutionality of an ordinance that banned from the city all pit bull dogs.

c. *Florida v. Peters, et al.*, 534 So. 2d 760 (Fla. Ct. App. 1988). The Florida Court of Appeals upheld the constitutionality of a North Miami, Florida ordinance regulating pit bull dogs.

d. *Ohio v. Robinson*, 44 Ohio App. 3d 128, 541 N.E.2d 1092 (1989). The Ohio Court of Appeals upheld the constitutionality of an Ohio statute regulating pit bull dogs.

e. *American Dog Owners Association, Inc. v. City of Lynn*, 404 Mass. 73, 533 N.E.2d 642 (1989). The Massachusetts Supreme Court found the issue of constitutionality to be moot because the ordinance had effectively been repealed. The Court suggested in dicta that the ordinance which was void of any reference to a breed failed to give officers ascertainable standards for application.

f. *Vanater v. Village of South Point*, 717 F.Supp. 1236 (S.D. Ohio W.D. 1989). The Federal District Court for the Western District of the Southern District of Ohio upheld the constitutionality of a city ordinance prohibiting the owning or harboring of pit bull dogs.

g. *American Dog Owners Association v. City of Yakima*, 113 Wash.2d 213, 777 P.2d 1046 (1989). The Washington Supreme Court upheld the constitutionality of an ordinance banning pit bull dogs from the city of Yakima.

In summary, every Court that has considered the constitutionality of breed specific pit bull dog laws on their merits, have upheld their validity.

2. THE KANSAS SUPREME COURT CORRECTLY DECIDED THE CONSTITUTIONAL ISSUES RAISED IN THIS CASE.

a. The City's Ordinance Regulating Pit Bull Dogs Is Not Unconstitutionally Vague.

In its opinion, the Kansas Supreme Court correctly analyzed and addressed the Petitioner's argument that an ordinance regulating specific breeds of dogs lacks the specificity required by the due process clause of the Fourteenth Amendment. The following passages from the Court's opinion summarize its analysis:

> Legislation is unconstitutionally vague when one cannot reasonably understand that his contemplated conduct is within the scope of that prescribed by the legislation. See *United States v. Harriss*, 347 U.S. 612, 617, 98 L. Ed. 989, 74 S. Ct. 808 (1954).
>
> "As generally stated, the void-for-vagueness doctrine requires that a penal statute define a criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357, 75 L. Ed. 2d 903, 103 S. Ct. 1855 (1983).
>
> However, "ultimate, god-like precision" is not required by the Constitution. *Miller v. California*, 413 U.S. 15, 28, 37 L. Ed. 2d 419, 93 S. Ct. 2607 (1973). The Constitution "does not require impossible standards"; it is satisfied by statutory language which "conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. The Constitution requires no more." *United States v. Petrillo*, 332 U.S. 1, 7-8, 91 L. Ed. 1877, 67 S.

Ct. 1538 (1947). That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is not sufficient reason to hold the language too ambiguous to define a criminal offense. *Miller v. California*, 413 U.S. at 27 n.10; *United States v. Petrillo*, 332 U.S. at 7; *Robinson v. United States*, 324 U.S. 282, 285, 286, 89 L. Ed. 944, 65 S. Ct. 666 (1945); see *United States v. Harriss*, 347 U.S. at 624 n.15.

Because of the strong presumption in favor of the constitutional validity of legislation, statutes are not " 'automatically invalidated as vague, simply because difficulty is found in determining whether certain marginal offenses fall within their language.' " *Parker v. Levy*, 417 U.S. at 757 (quoting *United States v. National Dairy Corp.*, 372 U.S. 29, 32-33, 9 L. Ed. 2d 561, 83 S. Ct. 594 ([1963]). In this regard, the United States Supreme Court has noted that "the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree." *Nash v. United States*, 229 U.S. 373, 377, 57 L. Ed. 1232, 33 S. Ct. 780 (1913).

It is important to note that we are not dealing with an ordinance that limits constitutionally protected conduct. Because the present ordinance does not infringe upon explicit constitutional guarantees, such as freedom of speech, the ordinance should be upheld unless it "is impermissively vague in all of its applications." *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 495, 71 L. Ed. 2d 362, 102 S. Ct. 1186, reh. denied, 456 U.S. 950 (1982). The plaintiffs must establish that the ordinance is unconstitutional on its face, which means it must be demonstrated to be " 'invalid in toto—and therefore incapable of any valid

application.' " *Hoffman Estates,* 455 U.S. at 494 n.5 (quoting *Steffel v. Thompson,* 415 U.S. 452, 474, 39 L. Ed. 2d 505, 94 S. Ct. 1209 [1974]). In order to establish that legislation is unconstitutional on its face, the person challenging the legislation must establish that it is vague " 'not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all.' " *Hoffman Estates,* 455 U.S. at 495 n. 7 (quoting *Coates v. City of Cincinnati,* 402 U.S. 611, 614, 29 L. Ed. 2d 214, 91 S. Ct. 1686 [1971]).

. . . .

We recognize the difficulty in attempting to identify a dog by breed with absolute certainty. That fact alone does not render an ordinance unconstitutionally vague. Perhaps Justice Potter Stewart articulated the dilemma best in *Jacobellis v. Ohio,* 378 U.S. 184, 197, 12 L. Ed. 2d 793, 84 S. Ct. 1676 (1964):

"I have reached the conclusion, which I think is confirmed at least by negative implication in the Court's decisions since *Roth* and *Alberts,* that under the First and Fourteenth Amendments criminal laws in this area are constitutionally limited to hard-core pornography. I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that."

The ordinance at issue identifies three specific breeds of dogs or dogs which "have the appearance and characteristics of being predominantly of" these breeds. The defendant city introduced evidence that

"breed" or "phenotype" is a commonly used and understood term for the physical appearance or description of an animal. The three specific breeds of dogs listed in the city ordinance are generally similar in appearance, and may be identified by their physical characteristics.

In implementing the ordinance, the Overland Park Police Department has adopted rules for the interpretation and implementation of the ordinance.

. . .

The present ordinance is interpreted to exclude doubtful cases from the scope of its regulation and therefore does not create an impermissibly vague standard.

. . .

Similarly, in *State v. Peters*, 534 So.2d 760 (Fla. Dist. App. 1988), the court rejected a similar vagueness challenge to a local ordinance regulating pit bull dog ownership. The Florida court concluded that the ordinance addressed itself in terms "sufficiently well understood by pit bull owners to enable them to determine whether their dogs fall within the proscription of the ordinance." The issue of whether a particular animal fell within the scope of the ordinance was therefore found to be "a matter of evidence, not constitutional law." 534 So.2d at 768.

We agree that whether a particular dog comes within the purview of the ordinance is a question of fact to be determined by the evidence.

Hearn, et al. v. City of Overland Park, 244 Kan. at 640, 641, 642, 643 and 644.

b. The Kansas Supreme Court Correctly Held That The Regulation of Pit Bull Dogs Was Rationally Related to the Protection of the Public's Health, Safety and Welfare and Therefore Was a Valid Exercise of the Police Power.

The Petitioners argued that the City's ordinance regulating pit bull dogs was an improper exercise of the City's police power and violated their Constitutional due process rights. The Kansas Supreme Court, quoting from this Court's decision in the case of *Goldblatt v. Hempstead*, 369 U.S. 590, 8 L. Ed. 2d 130, 82 S. Ct. 987 (1962), noted:

> To justify the State's assertion of its authority in behalf of the public, it must appear that the interests of the public require such interference; that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. Debatable questions as to reasonableness are not for the courts but for the legislature. Whether the regulation imposed by the act is reasonable depends upon such things as the nature of the menace against which it will protect, the magnitude of the curtailment of individual rights affected, and the availability and effectiveness of other less drastic protective measures.

Hearn, et al. v. City of Overland Park, 244 Kan. at 646.

The Kansas Supreme Court further noted that this Court in *Nichia v. New York*, 254 U.S. 228, 65 L. Ed. 235, 41 S. Ct. 103 (1920) recognized that local governmental bodies possess broad powers to regulate the ownership and possession of dogs within communities. An owner's property interest in dogs " 'is of an imperfect or qualified nature and they may be subjected to peculiar and drastic police regulations by the State without depriving their

owners of any federal right.' 254 U.S. at 230." *Hearn, et al. v. City of Overland Park*, 244 Kan. at 646.

As to the "nature of the menace" sought to be regulated, the Kansas Supreme Court, quoting from the decision of the Johnson County, Kansas District Court found that pit bull dogs

> represented a unique hazard to the public safety, and the city ordinance regulating the ownership and possession of these dogs was therefore reasonably related to a legitimate governmental objective. The evidence introduced at trial supports this conclusion. Defendant city introduced expert testimony that pit bull dogs are both more aggressive and destructive than other dogs. Pit bull dogs possess a strongly developed "kill instinct" not shared by other breeds of dogs. This testimony indicated that pit bull dogs are unique in their "savageness and unpredictability." Research indicates that pit bull dogs are twice as likely to cause multiple injuries as other breeds of dogs.
>
> Moreover, the injuries inflicted by pit bull dogs are far worse than those inflicted by other breeds. One witness, testifying as an expert on trauma injuries, testified that pit bull dog attacks inflicted injuries much more horrific than those in other dog attacks and were comparable, in his experience, only to those injuries inflicted in attacks by lions. The district court was also presented with a survey of 278 dog attacks indicating that a majority (54.1%) represented attacks by pit bull dogs. Of the 32 known human deaths in the United States due to dog attacks since July 1983, 23 were caused by attacks by pit bull dogs.

Id., at 647.

In summary the Kansas Supreme Court found that:

> The district court correctly upheld the city ordinance as a valid exercise of the community's police power. The ordinance does not impermissibly infringe upon the substantive due process rights of the plaintiffs. The unique public health hazard created by the presence of pit bulls within the community justifies the city's attempt to regulate this breed of dog.

3. THE ISSUES RAISED IN THIS CASE ARE BEST DECIDED BY LOCAL GOVERNMENTS AND ARE NOT OF SUFFICIENT SCOPE AND IMPORTANCE IN OUR SOCIETY TO WARRANT UNITED STATES SUPREME COURT REVIEW.

It has long been the law in this country that a property interest in a dog is of an imperfect and qualified nature, the possession of which may be subjected to peculiar or drastic regulation without depriving their owners of constitutionally protected rights. *Johnston v. Atlanta Humane Society, et al.*, 173 Ga. App. 416, 326 S.E.2d 585 (1985). In the case of *Sentell v. New Orleans*, 166 U.S. 698, 41 L. Ed. 1169, 17 S. Ct. 693 (1897) this Court held that the "government retains great power and discretion to control, prohibit and even destroy dogs . . . [Dogs] are subject to the police power of the state [to be] dealt with, as in the judgment of the legislature is necessary for the protection of its citizens." *Id.*, at 704, 17 S. Ct. at 695.

This Court's deference to local legislative control of domesticated animals was recently articulated and applied by the United States District Court for the Eastern District of Arkansas in the case of *Hol., et al. v. City of Maumelle*, 647 F.Supp. 1529 (E.D. Ark. 1986). In

Maumelle the plaintiffs challenged the constitutionality of a city ordinance prohibiting the keeping of pit bull dogs. The federal district court in applying the abstention doctrine held *inter alia:*

> . . . It is the Court's opinion that abstention will avoid unnecessary federal interference in state operations. The ordinance in question is comprehensive, and its purpose is to protect the Maumelle citizens. The question of the validity of the Ordinance is more appropriately a matter to be resolved by the state judicial system.
>
> The Court is of the opinion that this is a case involving issues of extreme local concern and one of substantial public importance. Abstention is necessary to avoid needless conflict with the administration by a municipality (or the state) of its own affairs. *Burford v. Sun Oil Co.,* 319 U.S. 315, 327, 63 S. Ct. 1098, 1104, 87 L. Ed. 1424 (1943); See *Alabama Public Service Commission v. Southern Railroad Co.,* 341 U.S. 341, 71 S. Ct. 762, 95 L. Ed. 1002 (1951). . . By the very local nature of the case, it lends itself particularly to resolution of this policy problem at the local level.

The petitioner's argument that this case involves an important Federal constitutional question which ought to be addressed and resolved by this court is without merit. This case is of interest only to those few individuals who were dissatisfied with the decision of the elected Governing Body that enacted the ordinance. Those elected officials listened to lengthy evidence presented on both sides. While the petitioners argued against any regulation, many citizens questioned the safety of their neighborhoods in light of the pit bull dog's history as a fighter and more recent legacy as an unpredictable killer. In the end, the

Governing Body took the middle ground permitting the safekeeping of the dogs within the city.

While Plaintiffs challenged the Governing Body's decision by alleging constitutional defects, their position, simply put, is that they disagreed with the decision of their local elected officials. Clearly, disagreement and discontent of individual dog owners with local dog regulation does not rise to the level of an important Federal constitutional question. This case raises only questions that revolve around the facts of this case. These questions have twice been previously resolved in favor of the City. There exist no broad constitutional issues requiring difficult analysis. As previously noted every court that has considered the constitutional validity of regulating pit bull dogs has reached the same result by applying long standing principles of constitutional review.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

MICHAEL R. SANTOS
(Counsel of Record)
Assistant City Attorney
8500 Santa Fe Drive
Overland Park, Kansas 66212
(913) 381-5252

-and-

ROBERT J. WATSON
City Attorney
8500 Santa Fe Drive
Overland Park, Kansas 66212
(913) 381-5252
Attorneys for Respondent